

STATE OF MICHIGAN
COURT OF APPEALS

NORTHVILLE LUMBER COMPANY, INC.,

Plaintiff,

v

JERRY B. MAYNARD and SAUNDRA L.
MAYNARD, a/k/a SAUNDRA L. STEPHENS,

Defendants-Appellees,

and

CONSTRUCTION LIEN RECOVERY FUND,

Defendant-Appellant,

and

GRAND VALLEY CO-OP CREDIT UNION,
JERRY'S HEATING & AIR CONDITIONING,
CHELSEA LUMBER COMPANY,
CONSOLIDATED BUILDING CONTRACTORS
& DESIGNERS, INC., DAVID M SCHUHARDT,
and MICHAEL E. SYLVESTRE,

Defendants.

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

PER CURIAM.

Defendant Construction Lien Recovery Fund appeals as of right the judgment entered against it on defendant Maynards' claim. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

* Circuit judge, sitting on the Court of Appeals by assignment.

UNPUBLISHED

April 20, 2001

No. 220344

Wayne Circuit Court

LC No. 96-637144-CH

Defendants Jerry and Sandra Maynard contracted with Consolidated Building Contractors and David Schuhardt for an extensive renovation of their home. Consolidated failed to complete the job, and several suppliers, including Chelsea Lumber Company and Northville Lumber Company filed liens on the Maynards' property. In order to continue work on the project, the Maynards reached an agreement with Chelsea and Northville to settle the lien claims in exchange for an assignment of the suppliers' claims against the Construction Lien Fund. Trial resulted in a judgment against the fund.

The Construction Lien Act is intended to achieve a dual protective purpose. It aspires to protect a lien claimant's right to payment and to protect a landowner from multiple payments for the same services. *Fischer-Flack v Churchfield*, 180 Mich App 606; 447 NW2d 813 (1989). MCL 570.1125; MSA 26.316(125) provides:

A construction lien which arises under this act is assignable. Proceedings for the enforcement of the lien may be maintained by, and in the name of, the assignee. In that case, the assignee shall have the same power to enforce the construction lien, and shall be subject to the same obligations, as if the proceedings were being taken by, and in the name of, the lien claimant.

The fund argues that this provision is limited to the enforcement of a lien, and not to claims against the fund. MCL 570.1201(3); MSA 26.316(201)(3) provides:

A person shall not be entitled to recover from the fund unless he or she has paid into the fund as required by this section.

Section 203(6) provides:

Payment from the fund shall be made only if the court finds that a subcontractor, supplier, or laborer is entitled to payment from the fund. Subject to section 204, after the judgment has become final the department shall pay the amount of the judgment out of the fund.

While the fund argues that the Maynards cannot recover from the fund because they are not contractors, suppliers, or laborers, and did not pay into the fund, the Maynards were assignees of the suppliers' claims. All legitimate causes of action are assignable. *Moorhouse v Ambassador Ins Co*, 147 Mich App 412, 421; 383 NW2d 219 (1985). The assignee acquires the same right, title and interest as the assignor. *Saginaw Financing Corp v Detroit Lubricator Co*, 256 Mich 441; 240 NW 44 (1932).

The fund relies on *Brown Plumbing & Heating, Inc v Construction Lien Recovery Fund*, 442 Mich 179; 500 NW2d 733 (1993), for the proposition that the jurisdictional provisions of the Construction Lien Act must be strictly construed. However, *Brown* does not address an assignment.

The fund argues that because the statute explicitly provides for the assignment of construction liens, but it is silent as to the assignment of claims against the fund, it implicitly prohibits such assignments. However, where all legitimate causes of action are assignable, there

is no showing that the Legislature intended to preclude the assignment of claims against the fund where there is no explicit indication of such intent. *Grand Traverse Convention & Visitor's Bureau v Park Place Motor Inn, Inc*, 176 Mich App 445; 440 NW2d 28 (1989).

Affirmed.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Fred L. Borchard